

Internal Revenue Service  
**memorandum**

CC:TL:TS  
HECK/alb

date: JUN 22 1987

to: District Counsel, Nashville SE:NAS

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

In re: Attorney Conflict of Interest

This memorandum is in response to your request of June 2, 1987, for our views concerning the potential conflict of interest situation present in the above-referenced case. You indicate that there is a possibility of noticing petitioners' attorneys for deposition under T.C. Rule 75 in this case and have asked that we discuss the relevant ethical considerations.

A brief review of the facts indicate that the attorneys who represent petitioners in this case, [REDACTED] and [REDACTED], have not cooperated with informal requests for discovery. You propose to notice petitioners' attorneys for deposition because of their involvement in and representation of the parties to the stock transaction at issue. Pursuant to CCDM (35)3(12)(10) we coordinated this matter with the General Legal Services Division (GLS). Attached is a copy of their response.

Based on our review of this matter, and our discussions with GLS, we concur that there is nothing ethically improper about noticing opposing counsel for deposition. We suggest, however, that before such notice is made another letter be sent to petitioners' attorneys providing an additional week to respond to our April 7th request for informal discovery. It should be noted in this "last chance" letter that a response to the April 7th letter has not been received and that respondent intends to give notice to take depositions under T.C. Rule 75. It is recommended that the notice, with a copy of the questions annexed to the notice, accompany this letter. It should also be pointed out in the letter that the possibility exists for petitioners' attorneys to be called as witnesses at trial. This, of course, would bring into play ABA Model Rule 3.7 and may necessitate new lead counsel. (See GLS memorandum).

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- 2 -

If you have any questions regarding this matter, please contact Patrick G. Heck of the Tax Shelter Branch on FTS 566-4174.

ROBERT P. RUWE

By:

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KATHLEEN E. WHATLEY  
Chief, Tax Shelter Branch

Attachments:  
As stated.

cc: Stuart Endick, CC:GLS